

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Michael D. Goins, <i>a.k.a. Michael Goins,</i>	)	C/A No. 4:13-412-CMC-TER
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Elbert Pearson, SCDC State Investigator; Sgt. C. Long;	)	
Corporal Council; John One Doe; John Two Doe; Each	)	Report and Recommendation
in their own official and their individual capacities,	)	
	)	
Defendants.	)	
	)	

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Plaintiff, proceeding *pro se* and *in forma pauperis*, is an inmate at Perry Correctional Institution, alleging violations of 42 U.S.C. § 1983. Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review such complaints for relief and submit findings and recommendations to a district judge. For the reasons that follow, the undersigned recommends that the district judge dismiss the Complaint, without prejudice and without issuance and service of process.

Factual and Procedural Background

The Complaint alleges that two unidentified female correctional officers at Kirkland Correctional Institution (“KCI”) confiscated Plaintiff’s legal documents and other personal property on May 14, 2009, after allegedly finding security threat group (“STG”) related contraband. ECF No. 1, pages 4–5. Plaintiff indicates that Defendants Elbert Pearson, Sgt. C. Long, and Corporal Council are “special investigators at SCDC headquarters . . . responsible for investigating the claims relating to STG.” *Id.* at 3. Plaintiff claims that the loss of his legal work resulted in a missed deadline “for

filing a motion for reconsideration” and in the dismissal of Plaintiff’s direct appeal. *Id.* at 4. Plaintiff seeks monetary damages. *Id.* at 5.

#### Standard of Review

Plaintiff filed this Complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed *sua sponte* under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Allison v. Kyle*, 66 F.3d 71, 73 (5th Cir. 1995).

*Pro se* complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When a federal court is evaluating a *pro se* complaint, the plaintiff’s allegations are assumed to be true. *Fine v. City of N. Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently

cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

### Discussion

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)). A legal action under § 1983 allows “a party who has been deprived of a federal right under the color of state law to seek relief.” *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

While Plaintiff claims a violation of his constitutional rights by alleged state actors, the instant case is subject to summary dismissal because it is a duplicate filing. Plaintiff previously filed a case in this Court, which involves the same facts and alleges the same claims raised in the instant pleading against Defendants Pearson, Long, and Council. *See Michael D. Goins v. Investigator Elbert Pearson, et al.*, C/A No. 4:12-3494-CMC-TER (D.S.C. Dec. 13, 2012)(order directing service against Investigator Elbert Pearson, Sgt. C. Long, and Cpl. Council issued on February 6, 2013).<sup>1</sup> The Complaint in Plaintiff’s previous case also discusses the actions of the two “John Doe” correctional officers named as Defendants in the present case. *Id.* at ECF No. 1, page 4.

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<sup>1</sup> A district court may take judicial notice of materials in the court’s own files from prior proceedings. *See United States v. Parker*, 956 F.2d 169, 171 (8th Cir. 1992); *Fletcher v. Bryan*, 175 F.2d 716 (4th Cir. 1949).

As the issues involved in the Complaint *sub judice* are currently being addressed in Plaintiff's pending case, this duplicate § 1983 Complaint is frivolous and subject to dismissal. *See Cottle v. Bell*, No. 00-6367, 2000 WL 1144623 at \*1 (4th Cir. Aug. 14, 2000) ("Because district courts are not required to entertain duplicative lawsuits, they may dismiss such suits as frivolous pursuant to § 1915(e)"); *Aziz v. Burrows*, 976 F.2d 1158 (8th Cir. 1992) ("[D]istrict courts may dismiss a duplicative complaint raising issues directly related to issues in another pending action brought by the same party."). Therefore, in the interests of judicial economy and efficiency, the instant Complaint should be summarily dismissed. *See Aloe Creme Laboratories, Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970) ("The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time. Once was sufficient.").

#### Conclusion

Accordingly, it is recommended that the Complaint be dismissed, *without prejudice* and without issuance and service of process.

IT IS SO RECOMMENDED.

s/Thomas E. Rogers, III  
Thomas E. Rogers, III  
United States Magistrate Judge

March 28, 2013  
Florence, South Carolina

**The parties are directed to note the important information in the attached  
"Notice of Right to File Objections to Report and Recommendation."**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
Post Office Box 2317  
Florence, South Carolina 29503

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).